

1 Kirk Pasich (CA State Bar No. 94242)
pasichk@dicksteinshapiro.com
2 Steven P. Inman, II (CA State Bar No. 227748)
inmans@dicksteinshapiro.com
3 DICKSTEIN SHAPIRO LLP
2049 Century Park East, Suite 700
4 Los Angeles, CA 90067
Telephone: (310) 772-8300
5 Facsimile: (310) 772-8301

6 Attorneys for Plaintiffs Midland Credit Management, Inc.;
Midland Funding, LLC; MRC Receivables Corporation; and
7 Midland Funding NCC-2 Corporation
8

9 UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA
11

12 MIDLAND CREDIT MANAGEMENT,
INC., a Kansas corporation; MIDLAND
13 FUNDING, LLC, a Delaware limited
liability company; MRC RECEIVABLES
14 CORPORATION, a Delaware
corporation; and MIDLAND FUNDING
15 NCC-2 CORPORATION, a Delaware
corporation,

16 Plaintiffs,

17 vs.

18 TRAUNER, COHEN & THOMAS, LLP,
19 a Georgia limited liability partnership,
and Does 1 through 10,

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 09-CV-2187 H (RBB)

Hon. Marilyn L. Huff

**PLAINTIFFS' EVIDENTIARY
OBJECTIONS TO THE
DECLARATION OF RUSSELL S.
THOMAS**

[Filed concurrently with Plaintiffs'
Opposition to Defendant's Motion to
Transfer Venue; Declaration of Brian
Frary in Support of Plaintiffs'
Opposition to Defendant's Motion to
Transfer Venue; and Plaintiffs'
Request for Judicial Notice in
Support of Opposition to Motion to
Transfer Venue]

Date: December 7, 2009

Time: 10:30 a.m.

Courtroom: 13

OBJECTIONS TO THE DECLARATION OF RUSSELL S. THOMAS

Plaintiffs Midland Credit Management, Inc., Midland Funding, LLC, MRC Receivables Corporation, and Midland Funding NCC-2 Corporation (collectively, “Midland”) object to the Declaration of Russell S. Thomas (“Thomas Declaration”) filed in support of the motion to transfer venue filed by Defendant Trauner, Cohen & Thomas (“TCT”) as follows:

Objection Number 1

1. ¶ 2, 1:21-24: “TCT (now known as Thomas & Cohen, LLP) was a Georgia limited liability partnership with its sole office previously located at 5901-C Peachtree Dunwood Road, Suite 500, Atlanta, 30328 Georgia.”

OBJECTIONS:

a. **No Foundation:** Midland objects to this statement on the grounds that it fails to state any facts to establish that Mr. Thomas has personal knowledge of any of the matters declared therein. Evidence introduced before a proper foundation has been laid is inadmissible, and the declaration establishes no foundation for any portion of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper affidavits by individuals with personal knowledge and other cognizable and significantly probative evidence”).

//

//

//

//

//

Objection Number 2

2. **3, 1:25-26:** “TCT was a lawfirm that specialized in creditors’ rights, bankruptcies, and account recovery.”

OBJECTIONS:

a. **No Foundation:** Midland objects to this statement on the grounds that it fails to state any facts to establish that Mr. Thomas has personal knowledge of any of the matters declared therein. Evidence introduced before a proper foundation has been laid is inadmissible, and the declaration establishes no foundation for any portion of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper affidavits by individuals with personal knowledge and other cognizable and significantly probative evidence”).

Objection Number 3

3. ¶ 4, 1:27: “TCT’s attorneys did not practice outside of the State of Georgia.”

OBJECTIONS:

a. **No Foundation:** Midland objects to this statement on the grounds that it fails to state any facts to establish that Mr. Thomas has personal knowledge of any of the matters declared therein. Evidence introduced before a proper foundation has been laid is inadmissible, and the declaration establishes no foundation for any portion of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d

1 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper
 2 affidavits by individuals with personal knowledge and other cognizable and
 3 significantly probative evidence”).

4 5 **Objection Number 4**

6
7 4. ¶ 5, 2:1-3: “Plaintiff Midland Credit Management, Inc. (“MCM”) and
 8 TCT entered into a written agreement whereby MCM engaged TCT to collect debts
 9 from debtors residing in the State of Georgia, which included preparing and filing
 10 lawsuits in the courts of the State of Georgia.”

11 **OBJECTIONS:**

12 a. **No Foundation:** Midland objects to this statement on the grounds that it
 13 fails to state any facts to establish that Mr. Thomas has personal knowledge of any of
 14 the matters declared therein. Evidence introduced before a proper foundation has
 15 been laid is inadmissible, and the declaration establishes no foundation for any portion
 16 of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not
 17 testify to a matter unless evidence is introduced sufficient to support a finding that the
 18 witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d
 19 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper
 20 affidavits by individuals with personal knowledge and other cognizable and
 21 significantly probative evidence”).

22 b. **Best Evidence Rule:** Midland objects to this statement on the grounds
 23 that it constitutes improper testimony regarding the contents of a written document.
 24 When evidence is based upon information obtained from a document, the document is
 25 the best evidence of its content. Fed. R. Evid. 1002; *U.S. v. Bennett*, 363 F. 3d 947,
 26 953 (9th Cir. 2004) (“the [best evidence] rule appl[ies] when a witness seeks to testify
 27 about the contents of a writing, recording or photograph without producing the
 28 physical item itself”).

1 c. **Improper Opinion:** Midland objects to this statement on the ground
 2 that it contains impermissible opinion testimony rather than a statement of fact.
 3 *Compare* Fed. R. Evid. 701. Mr. Thomas’s opinions regarding the nature of the
 4 document he purports to describe are not proper content for a declaration.

5 d. **Hearsay:** Midland objects to this statement because it contains
 6 impermissible hearsay. Fed. R. Evid. 801, 802. The Rules of Federal Civil Procedure
 7 provide that a party may file a declaration provided it states “*facts* that would be
 8 admissible evidence (rather than hearsay statements by others, or the declarant’s
 9 opinions or conclusions).” Schwarzer, Tashima, & Wagstaffe, California Practice
 10 Guide, *Federal Civil Procedure Before Trial* (“Rutter Guide”), ¶ 12:57.

11 **Objection Number 5**

12
 13
 14 5. ¶ 6, 2:4-5: “In general, the subject matter of the agreement between the
 15 parties relates to the collection of debts in the State of Georgia.”

16 **OBJECTIONS:**

17 a. **No Foundation:** Midland objects to this statement on the grounds that it
 18 fails to state any facts to establish that Mr. Thomas has personal knowledge of any of
 19 the matters declared therein. Evidence introduced before a proper foundation has
 20 been laid is inadmissible, and the declaration establishes no foundation for any portion
 21 of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not
 22 testify to a matter unless evidence is introduced sufficient to support a finding that the
 23 witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d
 24 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper
 25 affidavits by individuals with personal knowledge and other cognizable and
 26 significantly probative evidence”).

27 b. **Best Evidence Rule:** Midland objects to paragraph 6 of the Thomas
 28 Declaration on the grounds that it constitutes improper testimony regarding the

1 contents of a written document. When evidence is based upon information obtained
 2 from a document, the document is the best evidence of its content. Fed. R. Evid.
 3 1002; *U.S. v. Bennett*, 363 F. 3d 947, 953 (9th Cir. 2004) (“the [best evidence] rule
 4 appl[ies] when a witness seeks to testify about the contents of a writing, recording or
 5 photograph without producing the physical item itself”).

6 c. **Improper Opinion:** Midland objects to this statement on the ground
 7 that it contains impermissible opinion testimony rather than a statement of fact.
 8 *Compare* Fed. R. Evid. 701. Mr. Thomas’s opinions regarding the nature of the
 9 document he purports to describe are not proper content for a declaration.

10 d. **Hearsay:** Midland objects to this statement because it contains
 11 impermissible hearsay. Fed. R. Evid. 801, 802. The Rules of Federal Civil Procedure
 12 provide that a party may file a declaration provided it states “*facts* that would be
 13 admissible evidence (rather than hearsay statements by others, or the declarant’s
 14 opinions or conclusions).” Schwarzer, Tashima, & Wagstaffe, California Practice
 15 Guide, *Federal Civil Procedure Before Trial* (“Rutter Guide”), ¶ 12:57.

16 17 **Objection Number 6**

18
19 6. ¶ 7, 2:7-8: “TCT signed the agreement in Georgia, and carried out its
 20 duties and obligations under the agreement in Georgia.”

21 **OBJECTIONS:**

22 a. **No Foundation:** Midland objects to this statement on the grounds that it
 23 fails to state any facts to establish that Mr. Thomas has personal knowledge of any of
 24 the matters declared therein. Evidence introduced before a proper foundation has
 25 been laid is inadmissible, and the declaration establishes no foundation for any portion
 26 of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not
 27 testify to a matter unless evidence is introduced sufficient to support a finding that the
 28 witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d

1 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper
2 affidavits by individuals with personal knowledge and other cognizable and
3 significantly probative evidence”).

4 b. **Best Evidence Rule:** Midland objects to paragraph 7 of the Thomas
5 Declaration on the grounds that it constitutes improper testimony regarding the
6 contents of a written document. When evidence is based upon information obtained
7 from a document, the document is the best evidence of its content. Fed. R. Evid.
8 1002; *U.S. v. Bennett*, 363 F. 3d 947, 953 (9th Cir. 2004) (“the [best evidence] rule
9 appl[ies] when a witness seeks to testify about the contents of a writing, recording or
10 photograph without producing the physical item itself”).

11 c. **Improper Opinion:** Midland objects to this statement on the ground
12 that it contains impermissible opinion testimony rather than a statement of fact.
13 *Compare* Fed. R. Evid. 701. Mr. Thomas’s opinions regarding the nature of the
14 document he purports to describe are not proper content for a declaration.

15 **Objection Number 7**

16
17
18 7. ¶ 8, 2:9-10: “TCT received up to 5,000 collection accounts per month
19 from MCM, and said collection accounts were received in the State of Georgia.”

20 **OBJECTIONS:**

21 a. **No Foundation:** Midland objects to this statement on the grounds that it
22 fails to state any facts to establish that Mr. Thomas has personal knowledge of any of
23 the matters declared therein. Evidence introduced before a proper foundation has
24 been laid is inadmissible, and the declaration establishes no foundation for any portion
25 of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not
26 testify to a matter unless evidence is introduced sufficient to support a finding that the
27 witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d
28 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper

1 affidavits by individuals with personal knowledge and other cognizable and
2 significantly probative evidence”).

3 4 **Objection Number 8**

5
6 8. ¶ 9, 2:11-12: “All collection activities by TCT in connection with the
7 aforementioned accounts were conducted in the State of Georgia and involved
8 Georgia debtors.”

9 **OBJECTIONS:**

10 a. **No Foundation:** Midland objects to this statement on the grounds that it
11 fails to state any facts to establish that Mr. Thomas has personal knowledge of any of
12 the matters declared therein. Evidence introduced before a proper foundation has
13 been laid is inadmissible, and the declaration establishes no foundation for any portion
14 of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not
15 testify to a matter unless evidence is introduced sufficient to support a finding that the
16 witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d
17 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper
18 affidavits by individuals with personal knowledge and other cognizable and
19 significantly probative evidence”).

20 21 **Objection Number 9**

22
23 9. ¶ 10, 2:14-15: “All documents and things in TCT’s possession, custody,
24 and control that relate to Plaintiffs’ allegations set forth in their Complaint are located
25 in Georgia.”

26 **OBJECTIONS:**

27 a. **No Foundation:** Midland objects to this statement on the grounds that it
28 fails to state any facts to establish that Mr. Thomas has personal knowledge of any of

1 the matters declared therein. Evidence introduced before a proper foundation has
 2 been laid is inadmissible, and the declaration establishes no foundation for any portion
 3 of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not
 4 testify to a matter unless evidence is introduced sufficient to support a finding that the
 5 witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d
 6 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper
 7 affidavits by individuals with personal knowledge and other cognizable and
 8 significantly probative evidence”).

9 b. **Improper Opinion:** Midland objects to this statement on the ground
 10 that it contains impermissible opinion testimony rather than a statement of fact.
 11 *Compare* Fed. R. Evid. 701. Mr. Thomas’s opinions regarding which documents are
 12 in TCT’s possession, custody, or control are not proper content for a declaration. Nor
 13 are Mr. Thomas’s opinions regarding which documents relate to the allegations in
 14 Midland’s complaint.

15 **Objection Number 10**

16
 17 10. ¶ 11, 2:16-18: “The only contact that TCT had with the State of
 18 California in connection with its agreement with MCM as via electronic
 19 communication; otherwise, TCT has had no contact with the State of California.”

20 **OBJECTIONS:**

21 a. **No Foundation:** Midland objects to this statement on the grounds that it
 22 fails to state any facts to establish that Mr. Thomas has personal knowledge of any of
 23 the matters declared therein. Evidence introduced before a proper foundation has
 24 been laid is inadmissible, and the declaration establishes no foundation for any portion
 25 of the factual assertions contained therein. Fed. R. Evid. 602 (“A witness may not
 26 testify to a matter unless evidence is introduced sufficient to support a finding that the
 27 witness has personal knowledge of the matter.”); *United States v. Shumway*, 199 F.3d
 28 1093, 1104 (9th Cir. 1999) (finding that the court may consider as evidence “proper

1 affidavits by individuals with personal knowledge and other cognizable and
2 significantly probative evidence”).

3 b. **Improper Opinion:** Midland objects to this statement on the ground
4 that it contains impermissible opinion testimony rather than a statement of fact.
5 *Compare* Fed. R. Evid. 701. Mr. Thomas’s opinions regarding what constitutes a
6 “contact” with the State of California are not proper content for a declaration.
7

8 DATED: November 23, 2009

DICKSTEIN SHAPIRO LLP

9 s/Steven P. Inman, II
10 Attorneys for Plaintiffs
E-Mail: inmans@dicksteinshapiro.com
11

12 DOCSLA-46604
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28